

SENATE BILL NO. 5

INTRODUCED BY BLAYLOCK, DARKO, CONNELLY,
B. BROWN, SCHYE, L. NELSON, NATHE,
MADISON, DOWELL, GROSFIELD, HARP

IN THE SENATE

JANUARY 13, 1992

INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION.

FIRST READING.

JANUARY 14, 1992

ON MOTION, ADDITIONAL SPONSORS ADDED.

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

ON MOTION, TAKEN FROM SECOND READING
AND REFERRED TO RULES COMMITTEE.

SECOND READING, DO PASS AS AMENDED.

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 48; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 15, 1992

INTRODUCED AND REFERRED TO COMMITTEE
ON EDUCATION & CULTURAL RESOURCES.

FIRST READING.

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN.
AYES, 95; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

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Senate BILL NO. 5

INTRODUCED BY

Blaylock, Alayko, Connelly, Bob Brown, Selby, Helen NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE LOANS TO SCHOOL DISTRICTS TO PAY HOLDERS OF SCHOOL DISTRICT BONDS DECLARED INVALID OR UNENFORCEABLE BY A FINAL COURT ORDER OR INJUNCTION; PROVIDING CRITERIA TO QUALIFY FOR THE STATE LOANS; ESTABLISHING A COAL SEVERANCE TAX SCHOOL BOND CONTINGENCY LOAN FUND; REQUIRING A SCHOOL DISTRICT TO INCLUDE A COVENANT IN THE BOND RESOLUTION; LIMITING THE AMOUNT OF STATE-SECURED LOAN AUTHORITY ALLOCABLE TO SCHOOL DISTRICTS; AMENDING SECTIONS 17-5-703, 17-5-704, 17-5-1608, AND 17-6-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the decision of the Montana Supreme Court in Helena Elementary School District No. 1 v. State of Montana, 236 M 44, 759 P2d 684 (1989) (the Helena School District case), which became effective July 1, 1991, created uncertainty as to the validity and enforceability of Montana school district bonds issued after July 1, 1991; and

WHEREAS, neither the 1989 Legislature in House Bill No. 28, which addressed the funding issue for school operation, nor the 1991 Legislature addressed equalization of capital outlay; and

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WHEREAS, on October 7, 1991, the Montana Supreme Court denied a request to delay the effective date of its decision in the Helena School District case beyond July 1, 1991; and

WHEREAS, since July 1, 1991, Montana school districts have been unable to issue bonds because bond counsel is unable to give an unqualified opinion as to the validity and enforceability of the bonds; and

WHEREAS, there are certain school districts that are in need of new facilities but are currently unable to market bonds, including Plentywood, whose school was destroyed by fire; Livingston, which faces closure of its 80-year-old building by the State Fire Prevention and Investigation Program; and Clancy, which, like other districts, faces the threat of accreditation loss because of the unsafe and unsanitary conditions of its building.

THEREFORE, the Legislature finds it appropriate that until the 1993 Legislature can address the issue of capital outlay equalization, the state provide school districts the authority to obtain loans secured by the state to pay holders of school district bonds issued between [the effective date of this act] and January 1, 1993, by school districts faced with severe deficiencies in their current facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **NEW SECTION. Section 1. School district bonds -- state**
 2 **loan -- qualifications for state loan.** (1) The board of
 3 investments shall make a loan from the coal severance tax
 4 school bond contingency loan fund, established in
 5 17-5-703(1)(e), to a school district in an amount equal to
 6 the principal and interest payment on qualifying bonds when
 7 due in accordance with the provisions contained in the
 8 bonds. In order to receive a loan, the school district must:
 9 (a) have issued bonds between [the effective date of
 10 this act] and January 1, 1993, pursuant to 20-9-421 and
 11 20-9-464;
 12 (b) be prevented from making principal and interest
 13 payments on the bonds because the debt service levy for the
 14 bonds:
 15 (i) has been declared invalid or unenforceable under
 16 Article II, section 4, or Article X, section 1, of the
 17 Montana constitution by a final court order; or
 18 (ii) is prevented by an injunction;
 19 (c) have exhausted the debt service reserve for the
 20 bonds; and
 21 (d) have complied with all the requirements for the
 22 bonds contained in [section 2] and this section.
 23 (2) To qualify for the state loan described in
 24 subsection (1), a school district, before issuing its bonds,
 25 must have:

1 (a) received voter approval for bonds pursuant to
 2 20-9-421;
 3 (b) following voter approval, received a certificate of
 4 eligibility from the board of public education stating that
 5 after consultation with the superintendent of public
 6 instruction, the board has determined that a minimum of 75%
 7 of the principal amount of the proposed bonds will be used
 8 to:
 9 (i) restore, rebuild, or replace a destroyed or
 10 severely damaged school building;
 11 (ii) correct one or more building deficiencies that
 12 affect the health and safety of school children;
 13 (iii) correct one or more deficiencies that prevent the
 14 school district from meeting current accreditation
 15 standards; or
 16 (iv) address any combination of circumstances described
 17 under subsections (2)(b)(i) through (2)(b)(iii); and
 18 (c) received a final certificate of allocation from the
 19 department of administration pursuant to subsection (5).
 20 (3) The board of public education shall:
 21 (a) maintain a record of the total principal amount of
 22 bonds for which certification has been issued; and
 23 (b) immediately furnish to the department a copy of
 24 each certificate issued.
 25 (4) Upon receipt of a copy of the certificate from the

1 board of public education, the department shall temporarily
 2 allocate loan authority to the school district for the
 3 principal amount of bonds indicated in the board's
 4 certificate. The principal amount of bonds for which final
 5 certification is issued may be less than the principal
 6 amount of bonds approved by the voters pursuant to
 7 subsection (2)(a).

8 (5) To obtain a final certificate of allocation, a
 9 school district shall provide the department, on a form
 10 provided by the department, the following information:

11 (a) the tentative date of sale of the school district's
 12 bonds;

13 (b) the principal amount of the bonds to be issued;

14 (c) the name and addresses of bond counsel and the
 15 financial advisor; and

16 (d) other information as requested by the department.

17 (6) Upon issuance of the bonds, a school district shall
 18 forward to the department a copy of the district's bond
 19 resolution, the final opinion of bond counsel on the bonds,
 20 and a schedule of principal and interest payments on the
 21 bonds to maturity. The bond resolution must include a
 22 covenant agreeing to:

23 (a) defend any lawsuit challenging the school
 24 district's authority to sell and issue the bonds and to levy
 25 a tax for payment of the principal of and interest on the

1 bonds;

2 (b) provide to the department before August 1 of each
 3 year a report of the school district's outstanding principal
 4 balance as of the preceding June 30 on the bonds secured by
 5 state loans;

6 (c) refund the bonds on any normal call date if, during
 7 the term of the bonds, the school district can refund its
 8 bonds without the state loan security and without increasing
 9 its total debt service costs on the bonds; and

10 (d) enter into a contract with the department
 11 establishing a schedule to repay the state if the state
 12 loans the school district money to make payments on district
 13 bonds. Notwithstanding other provisions of law, the loan
 14 must be repaid by the school district at a rate equivalent
 15 to the average yield of the pooled investment fund
 16 established in 17-6-203(3), commonly known as the short-term
 17 investment pool, for the period of the loan. Repayment must
 18 be paid from the sources designated for repayment of the
 19 bonds or from any other revenue of the school district,
 20 including state equalization funds currently distributed or
 21 which may be distributed to the district. Loan repayments
 22 received by the department must be deposited in the coal
 23 severance tax school bond contingency loan fund.

24 (7) The department shall maintain a record of the total
 25 principal amount of bonds secured by state loans.

1 (8) A school district issuing bonds subject to [section
2 2] and this section may apply to the attorney general for a
3 determination as to whether its bonds are affected by a
4 court order declaring that the bonds of another district are
5 invalid or unenforceable.

6 (9) A school district whose authority to levy a
7 property tax to pay principal of and interest on bonds has
8 been challenged shall, upon notification of the challenge,
9 immediately notify the attorney general and the department.

10 **NEW SECTION. Section 2. State loan -- limitation on**
11 **state loan authority -- priority of loan allocation --**
12 **application.** (1) The allocation of the state's loan
13 authority for bonds issued pursuant to [section 1] is
14 intended only to enable a school district to issue bonds
15 pending resolution of the financing of capital outlay.

16 (2) Except as provided in subsection (5), the total
17 principal amount of school district bonds that may be
18 secured by loans under [section 1] may not exceed \$25
19 million and must be allocated to qualifying school districts
20 on a first-come, first-serve basis in order of issuance of
21 final certificates of allocation by the department of
22 administration.

23 (3) An individual school district may not issue bonds
24 secured by a state loan with a principal amount in excess of
25 \$6 million.

1 (4) If more than one school district qualifies for a
2 state loan and an insufficient amount of state loan
3 authority remains, the board of public education shall
4 allocate the state loan authority to the district with the
5 earliest voter approval of its bonds.

6 (5) Prior to allocating the final \$1.5 million of state
7 loan authority under [section 1], the board of public
8 education shall determine if there is a school district
9 eligible for a state loan under [section 1(2)(b)(i)] and, if
10 so, shall give that district first priority to the remaining
11 loan authority.

12 (6) This section does not apply unless a bond
13 resolution contains the covenant required under [section
14 1(6)].

15 **Section 3.** Section 17-5-703, MCA, is amended to read:

16 **"17-5-703. Coal severance tax trust funds.** (1) The
17 trust established under Article IX, section 5, of the
18 Montana constitution shall be composed of the following
19 funds:

20 (a) a coal severance tax bond fund into which the
21 constitutionally dedicated receipts from the coal severance
22 tax shall be deposited;

23 (b) a clean coal technology demonstration fund;

24 (c) a coal severance tax permanent fund; and

25 (d) a coal severance tax income fund; and

1 (e) a coal severance tax school bond contingency loan
2 fund.

3 (2) The state treasurer shall determine the amount
4 necessary to meet all principal and interest payments on
5 bonds payable from the coal severance tax bond fund on the
6 next two ensuing semiannual payment dates and retain that
7 amount in the coal severance tax bond fund.

8 (3) (a) Beginning July 1, 1992, and continuing as long
9 as any school district bonds secured by state loans under
10 [section 1] are outstanding, the state treasurer shall from
11 time to time and as provided in subsection (3)(b) transfer
12 from the coal severance tax bond fund to the coal severance
13 tax school bond contingency loan fund any amount in the coal
14 severance tax bond fund in excess of the amount that is
15 specified in subsection (2) to be retained in the fund.

16 (b) The state treasurer shall transfer the amount
17 referred to in subsection (3)(a) until and unless the
18 balance in the coal severance tax school bond contingency
19 loan fund is equal to the amount due as principal of and
20 interest on the school district bonds secured by state loans
21 under [section 1] during the next following 12 months.

22 {3}(4) Beginning on July 1, 1991, and ending on June
23 30, 1997, from any amount in the coal severance tax bond
24 fund in excess of the amount that is specified in subsection
25 (2) to be retained in the fund and in excess of any amount

1 that is required to be transferred by subsection (3), the
2 state treasurer shall from time to time transfer from the
3 excess-amount-in-the-coal-severance-tax-bond-fund an amount
4 not exceeding \$5 million a per fiscal year to the clean coal
5 technology demonstration fund and any remaining amount to
6 the coal severance tax permanent fund.

7 (5) Beginning July 1, 1998, the state treasurer shall
8 transfer to the coal severance tax permanent fund any amount
9 in the coal severance tax bond fund in excess of the amount
10 that is specified in subsection (2) to be retained in the
11 fund and in excess of amounts that are transferred pursuant
12 to subsections (3) and (4)."

13 **Section 4.** Section 17-5-704, MCA, is amended to read:

14 "17-5-704. Investment of funds. Money in the coal
15 severance tax bond fund, the coal severance tax permanent
16 fund, and the coal severance tax income fund, and the coal
17 severance tax school bond contingency loan fund must be
18 invested in accordance with the investment standards for
19 coal severance tax funds. Income and earnings from all funds
20 are statutorily appropriated, as provided in 17-7-502, as
21 follows:

- 22 (1) 15% to the state equalization aid account; and
23 (2) 85% to the state general fund."

24 **Section 5.** Section 17-5-1608, MCA, is amended to read:

25 "17-5-1608. Limitations on amounts. The board may not

1 issue any bonds or notes that cause the total outstanding
 2 indebtedness of the board under this part (except for bonds
 3 or notes issued to fund or refund other outstanding bonds or
 4 notes or to purchase registered warrants or tax or revenue
 5 anticipation notes of a local government as defined in
 6 7-6-1101) to exceed \$50 million, less the principal amount
 7 of outstanding school district bonds that are secured by
 8 state loans under [section 1]."

9 **Section 6.** Section 17-6-310, MCA, is amended to read:

10 "17-6-310. **No Limits on direct loans.** (1) The Except as
 11 provided in [section 1], the state may not use this--revenue
 12 the portion of the permanent coal tax trust fund designated
 13 for investment in the Montana economy to make direct loans.

14 (2) The Except as provided in [section 1], the
 15 permanent coal tax trust fund may not be used by the board
 16 of investments to make direct loans to individual borrowers.
 17 The purchase of debentures issued by a capital company and
 18 loans or portions of loans originated by a financial
 19 institution that are sold to the trust are not direct
 20 loans."

21 **NEW SECTION. Section 7. Codification instruction.**
 22 [Sections 1 and 2] are intended to be codified as an
 23 integral part of Title 20, chapter 9, part 4, and the
 24 provisions of Title 20, chapter 9, part 4, apply to
 25 [sections 1 and 2].

1 **NEW SECTION. Section 8. Effective date.** [This act] is
 2 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0005, 3rd reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing state loans to school districts to pay holders of school district bonds declared invalid or unenforceable by a final court order or injunction; providing criteria to qualify for the state loans; establishing a coal severance tax school bond contingency loan fund; requiring a school district to include a covenant in the bond resolution; limiting the amount of state-secured loan authority allocable to school districts; and providing an immediate date and a contingent effective date.

FISCAL IMPACT:

Office of Public Instruction

The total principal amount of school district bonds secured by loans will be \$25 million. The annual principal and interest payment on these loans will be \$2,293,000. The \$2,293,000 will flow through the school bond contingency fund each year and will earn the STIP interest rate. The earnings will be the same whether the funds are loaned to school districts or the fund balance is invested in STIP.

Department of Administration

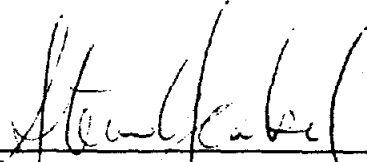
Loan repayment schedules may need to be prepared in the future. The department will require that the contract between the schools and the department contain a requirement that the schools present a repayment schedule to the department that complies with SB5. It is assumed that the financial consultants used by the schools (when they issue their bonds) will prepare the schedules. Therefore, there would be no cost incurred by the department.

EFFECT ON LOCAL GOVERNMENTS:

The legislation will enable school districts to take advantage of the relatively low long-term interest rates presently available for 20-year bonds. The result will be to save taxpayers in terms of long-term interest costs.

It is assumed that school districts will pay for the costs of preparing debt repayment schedules in the event that a loan is made to a school district.

(Continued next page)



STEVE YEAKEL, BUDGET DIRECTOR 8/1/92
Office of Budget and Program Planning DATE



CHET BLAYLOCK, PRIMARY SPONSOR 1/16/92
DATE

Fiscal Note for SB0005, 3rd reading

SB5

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The pledge on school bonds secured by this legislation will last for the full term of the bonds. The precedent will be set for future capital planning.

The school bond loan account must be maintained until the maturity of the school district bonds issued under the specifications of SB5. This could be for a period of 20 years. This means approximately \$2.5-3 million/year must be left in the school bond loan account each year for the 20 years.

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

SENATE BILL NO. 5

INTRODUCED BY BLAYLOCK, DARKO, CONNELLY,

B. BROWN, SCHYE, L. NELSON, NATHE,

MADISON, DOWELL, GROSFIELD, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE LOANS TO SCHOOL DISTRICTS TO PAY HOLDERS OF SCHOOL DISTRICT BONDS DECLARED INVALID OR UNENFORCEABLE BY A FINAL COURT ORDER OR INJUNCTION; PROVIDING CRITERIA TO QUALIFY FOR THE STATE LOANS; ESTABLISHING A COAL SEVERANCE TAX SCHOOL BOND CONTINGENCY LOAN FUND; REQUIRING A SCHOOL DISTRICT TO INCLUDE A COVENANT IN THE BOND RESOLUTION; LIMITING THE AMOUNT OF STATE-SECURED LOAN AUTHORITY ALLOCABLE TO SCHOOL DISTRICTS; REQUIRING A THREE-FOURTHS VOTE OF EACH HOUSE OF THE LEGISLATURE FOR APPROVAL; AMENDING SECTIONS 17-5-703, 17-5-704, ~~17-5-1600~~ AND 17-6-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the decision of the Montana Supreme Court in Helena Elementary School District No. 1 v. State of Montana, 236 M 44, 769 P2d 684 (1989) (the Helena School District case), which became effective July 1, 1991, created uncertainty as to the validity and enforceability of Montana school district bonds issued after July 1, 1991; and

WHEREAS, neither the 1989 Legislature in House Bill No.

28, which addressed the funding issue for school operation, nor the 1991 Legislature addressed equalization of capital outlay; and

WHEREAS, on October 7, 1991, the Montana Supreme Court denied a request to delay the effective date of its decision in the Helena School District case beyond July 1, 1991; and

WHEREAS, since July 1, 1991, Montana school districts have been unable to issue bonds because bond counsel is unable to give an unqualified opinion as to the validity and enforceability of the bonds; and

WHEREAS, there are certain school districts that are in need of new facilities but are currently unable to market bonds, including Plentywood, ~~whose school was~~ AND WEST GLACIER, WHOSE SCHOOLS WERE destroyed by fire; Livingston, which faces closure of its 80-year-old building by the State Fire Prevention and Investigation Program; and Clancy, which, like other districts, faces the threat of accreditation loss because of the unsafe and unsanitary conditions of its building.

THEREFORE, the Legislature finds it appropriate that until the 1993 Legislature can address the issue of capital outlay equalization, the state provide school districts the authority to obtain loans secured by the state to pay holders of school district bonds issued between [the effective date of this act] and January 1, 1993, by school

1 districts faced with severe deficiencies in their current
2 facilities.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. **Section 1. School district bonds -- state**
6 **loan -- qualifications for state loan.** (1) The board-of
7 **investments** DEPARTMENT OF ADMINISTRATION shall make a loan
8 from the coal severance tax school bond contingency loan
9 fund, established in 17-5-703(1)(e), to a school district in
10 an amount equal to the principal and interest payment on
11 qualifying bonds when due in accordance with the provisions
12 contained in the bonds. In order to receive a loan, the
13 school district must:

14 (a) have issued bonds between [the effective date of
15 this act] and January 1, 1993, pursuant to 20-9-421 and
16 20-9-464;

17 (b) be prevented from making principal and interest
18 payments on the bonds because the debt service levy for the
19 bonds:

20 (i) has been declared invalid or unenforceable under
21 Article II, section 4, or Article X, section 1, of the
22 Montana constitution by a final court order; or

23 (ii) is prevented by an injunction;

24 (c) have exhausted the debt service reserve for the
25 bonds; and

1 (d) have complied with all the requirements for the
2 bonds contained in [section 2] and this section.

3 (2) To qualify for the state loan described in
4 subsection (1), a school district, before issuing its bonds,
5 must have:

6 (a) received voter approval for bonds pursuant to
7 20-9-421;

8 (b) following voter approval, received a certificate of
9 eligibility from the board of public education stating that
10 after consultation with the superintendent of public
11 instruction, the board has determined that a minimum of 75%
12 of the principal amount of the proposed bonds will be used
13 to:

14 (i) restore, rebuild, or replace a destroyed or
15 severely damaged school building;

16 (ii) correct one or more building deficiencies that
17 affect the health and safety of school children;

18 (iii) correct one or more deficiencies that prevent the
19 school district from meeting current accreditation
20 standards; or

21 (iv) address any combination of circumstances described
22 under subsections (2)(b)(i) through (2)(b)(iii); and

23 (c) received a final certificate of allocation from the
24 department of administration pursuant to subsection (5).

25 (3) The board of public education shall:

1 (a) maintain a record of the total principal amount of
2 bonds for which certification has been issued; and

3 (b) immediately furnish to the department a copy of
4 each certificate issued.

5 (4) Upon receipt of a copy of the certificate from the
6 board of public education, the department shall temporarily
7 allocate loan authority to the school district for EQUAL TO
8 the principal amount of bonds indicated in the board's
9 certificate. The principal amount of bonds for which final
10 certification is issued may be less than the principal
11 amount of bonds approved by the voters pursuant to
12 subsection (2)(a).

13 (5) To obtain a final certificate of allocation, a
14 school district shall provide the department, on a form
15 provided by the department, the following information:

16 (a) the tentative date of sale of the school district's
17 bonds;

18 (b) the principal amount of the bonds to be issued;

19 (c) the name and addresses of bond counsel and the
20 financial advisor; and

21 (d) other information as requested by the department.

22 (6) Upon issuance of the bonds, a school district shall
23 forward to the department a copy of the district's bond
24 resolution, the final opinion of bond counsel on the bonds,
25 and a schedule of principal and interest payments on the

1 bonds to maturity. The bond resolution must include a
2 covenant agreeing to:

3 (a) defend any lawsuit challenging the school
4 district's authority to sell and issue the bonds and to levy
5 a tax for payment of the principal of and interest on the
6 bonds;

7 (b) provide to the department before August 1 of each
8 year a report of the school district's outstanding principal
9 balance as of the preceding June 30 on the bonds secured by
10 state-loans THE STATE;

11 (c) refund the bonds on any normal call date if, during
12 the term of the bonds, the school district can refund its
13 bonds without the state loan security and without increasing
14 its total debt service costs on the bonds; and

15 (d) enter into a contract with the department
16 establishing a schedule to repay the state if the state
17 loans the school district money to make payments on district
18 bonds. Notwithstanding other provisions of law, the loan
19 must be repaid by the school district at a rate equivalent
20 to the average yield of the pooled investment fund
21 established in 17-6-203(3), commonly known as the short-term
22 investment pool, for the period of the loan. REPAYMENT MUST
23 BEGIN NO LATER THAN JANUARY 1, 1994, AND THE LOAN MUST BE
24 REPAID IN FULL WITHIN 10 YEARS FROM THE DATE THE FIRST LOAN
25 IS ISSUED TO A SCHOOL DISTRICT. Repayment must be paid from

1 the sources designated for repayment of the bonds or from
 2 any other revenue AND ASSETS of the school district,
 3 including state equalization funds currently distributed or
 4 which may be distributed to the district. THE OBLIGATION OF
 5 THE SCHOOL DISTRICT TO PAY BONDHOLDERS IS SENIOR TO ITS
 6 OBLIGATION TO REPAY THE STATE LOAN. Loan repayments received
 7 by the department must be deposited in the coal severance
 8 tax school bond contingency loan fund.

9 (7) The department shall maintain a record of the total
 10 principal amount of bonds secured by state loans.

11 (8) A school district issuing bonds subject to [section
 12 2] and this section may apply to the attorney general for a
 13 determination as to whether its bonds are affected by a
 14 court order declaring that the bonds of another district are
 15 invalid or unenforceable.

16 (9) A school district whose authority to levy a
 17 property tax to pay principal of and interest on bonds has
 18 been challenged shall, upon notification of the challenge,
 19 immediately notify the attorney general and the department.

20 NEW SECTION. Section 2. state loan -- limitation on
 21 state loan authority -- priority of loan allocation --
 22 application. (1) The allocation of the state's loan
 23 authority for bonds issued pursuant to [section 1] is
 24 intended only to enable a school district to issue bonds
 25 pending resolution of the financing of capital outlay.

1 (2) Except as provided in subsection (5), the total
 2 principal amount of school district bonds that may be
 3 secured by loans under [section 1] may not exceed \$25
 4 million and must be allocated to qualifying school districts
 5 on a first-come, first-serve basis in order of issuance of
 6 final certificates of allocation by the department of
 7 administration.

8 (3) An individual school district may not issue bonds
 9 secured by a state loan with a principal amount in excess of
 10 \$6 million.

11 (4) If more than one school district qualifies for a
 12 state loan and an insufficient amount of state loan
 13 authority remains, the board of public education shall
 14 allocate the state loan authority to the district with the
 15 earliest voter approval of its bonds.

16 (5) Prior to allocating the final \$1.5 million of state
 17 loan authority under [section 1], the board of public
 18 education shall determine if there is a school district
 19 eligible for a state loan under [section 1(2)(b)(i)] and, if
 20 so, shall give that district first priority to the remaining
 21 loan authority.

22 (6) This section does not apply unless a bond
 23 resolution contains the covenant required under [section
 24 1(6)].

25 **Section 3.** Section 17-5-703, MCA, is amended to read:

1 **"17-5-703. Coal severance tax trust funds.** (1) The
 2 trust established under Article IX, section 5, of the
 3 Montana constitution shall be composed of the following
 4 funds:

5 (a) a coal severance tax bond fund into which the
 6 constitutionally dedicated receipts from the coal severance
 7 tax shall be deposited;

8 (b) a clean coal technology demonstration fund;

9 (c) a coal severance tax permanent fund; and

10 (d) a coal severance tax income fund; and

11 (e) a coal severance tax school bond contingency loan
 12 fund.

13 (2) The state treasurer shall determine the amount
 14 necessary to meet all principal and interest payments on
 15 bonds payable from the coal severance tax bond fund on the
 16 next two ensuing semiannual payment dates and retain that
 17 amount in the coal severance tax bond fund.

18 (3) (a) Beginning--July-17-1992, ON [THE EFFECTIVE DATE
 19 OF THIS ACT] and continuing as long as any school district
 20 bonds secured by state loans under [section 1] are
 21 outstanding, the state treasurer shall from time to time and
 22 as provided in subsection (3)(b) transfer from the coal
 23 severance tax bond fund to the coal severance tax school
 24 bond contingency loan fund any amount in the coal severance
 25 tax bond fund in excess of the amount that is specified in

1 subsection (2) to be retained in the fund.

2 (b) The state treasurer shall transfer the amount
 3 referred to in subsection (3)(a) until and unless the
 4 balance in the coal severance tax school bond contingency
 5 loan fund is equal to the amount due as principal of and
 6 interest on the school district bonds secured by state loans
 7 under [section 1] during the next following 12 months.

8 ~~(3)(4)~~ Beginning on July 1, 1991, and ending on June
 9 30, 1997, from any amount in the coal severance tax bond
 10 fund in excess of the amount that is specified in subsection
 11 (2) to be retained in the fund and in excess of any amount
 12 that is required to be transferred by subsection (3), the
 13 state treasurer shall from time to time transfer from the
 14 excess-amount-in-the-coal-severance-tax-bond-fund an amount
 15 not exceeding \$5 million a per fiscal year to the clean coal
 16 technology demonstration fund and-any-remaining-amount-to
 17 the-coal-severance-tax-permanent-fund.

18 (5) Beginning July 1, 1998 1997, the state treasurer
 19 shall transfer to the coal severance tax permanent fund any
 20 amount in the coal severance tax bond fund in excess of the
 21 amount that is specified in subsection (2) to be retained in
 22 the fund and in excess of amounts that are transferred
 23 pursuant to subsections (3) and (4)."

24 **Section 4.** Section 17-5-704, MCA, is amended to read:

25 **"17-5-704. Investment of funds.** Money in the coal

1 severance tax bond fund, the coal severance tax permanent
2 fund, ~~and the coal severance tax income fund, and the coal~~
3 ~~severance tax school bond contingency loan fund~~ must be
4 invested in accordance with the investment standards for
5 coal severance tax funds. Income and earnings from all funds
6 are statutorily appropriated, as provided in 17-7-502, as
7 follows:

- 8 (1) 15% to the state equalization aid account; and
- 9 (2) 85% to the state general fund."

10 ~~Section 5. Section 17-5-1608, MCA, is amended to read:~~

11 ~~"17-5-1608. Limitations on amounts. The board may not~~
12 ~~issue any bonds or notes that cause the total outstanding~~
13 ~~indebtedness of the board under this part (except for bonds~~
14 ~~or notes issued to fund or refund other outstanding bonds or~~
15 ~~notes or to purchase registered warrants or tax or revenue~~
16 ~~anticipation notes of a local government as defined in~~
17 ~~7-6-1101) to exceed \$50 million, less the principal amount~~
18 ~~of outstanding school district bonds that are secured by~~
19 ~~state loans under (section 1)."~~

20 **Section 5.** Section 17-6-310, MCA, is amended to read:

21 "17-6-310. No Limits on direct loans. (1) The Except as
22 provided in [section 1], the state may not use this revenue
23 the portion of the permanent coal tax trust fund designated
24 for investment in the Montana economy to make direct loans.

- 25 (2) The Except as provided in [section 1], the

1 permanent coal tax trust fund may not be used by the board
2 of investments to make direct loans to individual borrowers.
3 The purchase of debentures issued by a capital company and
4 loans or portions of loans originated by a financial
5 institution that are sold to the trust are not direct
6 loans."

7 **NEW SECTION. Section 6.** Codification instruction.

8 [Sections 1 and 2] are intended to be codified as an
9 integral part of Title 20, chapter 9, part 4, and the
10 provisions of Title 20, chapter 9, part 4, apply to
11 [sections 1 and 2].

12 **NEW SECTION. SECTION 7.** REQUIREMENT FOR THREE-FOURTHS

13 VOTE. BECAUSE [THIS ACT] APPROPRIATES MONEY FROM THE
14 PERMANENT COAL SEVERANCE TAX FUND, A VOTE OF THREE-FOURTHS
15 OF EACH HOUSE OF THE LEGISLATURE IS REQUIRED FOR APPROVAL OF
16 [THIS ACT].

17 **NEW SECTION. Section 8.** Effective date. [This act] is

18 effective on passage and approval.

-End-

1 SENATE BILL NO. 5

2 INTRODUCED BY BLAYLOCK, DARKO, CONNELLY,

3 B. BROWN, SCHYE, L. NELSON, NATHE,

4 MADISON, DOWELL, GROSFIELD, HARP

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE LOANS
7 TO SCHOOL DISTRICTS TO PAY HOLDERS OF SCHOOL DISTRICT BONDS
8 DECLARED INVALID OR UNENFORCEABLE BY A FINAL COURT ORDER OR
9 INJUNCTION; PROVIDING CRITERIA TO QUALIFY FOR THE STATE
10 LOANS; ESTABLISHING A COAL SEVERANCE TAX SCHOOL BOND
11 CONTINGENCY LOAN FUND; REQUIRING A SCHOOL DISTRICT TO
12 INCLUDE A COVENANT IN THE BOND RESOLUTION; LIMITING THE
13 AMOUNT OF STATE-SECURED LOAN AUTHORITY ALLOCABLE TO SCHOOL
14 DISTRICTS; ~~REQUIRING A THREE-FOURTHS VOTE OF EACH HOUSE OF~~
15 ~~THE LEGISLATURE FOR APPROVAL~~; AMENDING SECTIONS 17-5-703,
16 17-5-704, ~~17-5-1608~~, AND 17-6-310, MCA; AND PROVIDING AN
17 IMMEDIATE EFFECTIVE DATE AND A CONTINGENT EFFECTIVE DATE."
18

19 WHEREAS, the decision of the Montana Supreme Court in
20 Helena Elementary School District No. 1 v. State of Montana,
21 236 M 44, 769 P2d 684 (1989) (the Helena School District
22 case), which became effective July 1, 1991, created
23 uncertainty as to the validity and enforceability of Montana
24 school district bonds issued after July 1, 1991; and

25 WHEREAS, neither the 1989 Legislature in House Bill No.

1 28, which addressed the funding issue for school operation,
2 nor the 1991 Legislature addressed equalization of capital
3 outlay; and

4 WHEREAS, on October 7, 1991, the Montana Supreme Court
5 denied a request to delay the effective date of its decision
6 in the Helena School District case beyond July 1, 1991; and

7 WHEREAS, since July 1, 1991, Montana school districts
8 have been unable to issue bonds because bond counsel is
9 unable to give an unqualified opinion as to the validity and
10 enforceability of the bonds; and

11 WHEREAS, there are certain school districts that are in
12 need of new facilities but are currently unable to market
13 bonds, including Plentywood, ~~whose school was~~ AND WEST
14 GLACIER, WHOSE SCHOOLS WERE destroyed by fire; Livingston,
15 which faces closure of its 80-year-old building by the State
16 Fire Prevention and Investigation Program; and Clancy,
17 which, like other districts, faces the threat of
18 accreditation loss because of the unsafe and unsanitary
19 conditions of its building.

20 THEREFORE, the Legislature finds it appropriate that
21 until the 1993 Legislature can address the issue of capital
22 outlay equalization, the state provide school districts the
23 authority to obtain loans secured by the state to pay
24 holders of school district bonds issued between [the
25 effective date of this act] and January 1, 1993, by school

1 districts faced with severe deficiencies in their current
2 facilities.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. Section 1. School district bonds -- state
6 loan -- qualifications for state loan. (1) The board-of
7 investments DEPARTMENT OF ADMINISTRATION shall make a loan
8 from the coal severance tax school bond contingency loan
9 fund, established in 17-5-703(1)(e), to a school district in
10 an amount equal to the principal and interest payment on
11 qualifying bonds when due in accordance with the provisions
12 contained in the bonds. In order to receive a loan, the
13 school district must:

14 (a) have issued bonds between [the effective date of
15 this act] and January 1, 1993, pursuant to 20-9-421 and
16 20-9-464;

17 (b) be prevented from making principal and interest
18 payments on the bonds because the debt service levy for the
19 bonds:

20 (i) has been declared invalid or unenforceable under
21 Article II, section 4, or Article X, section 1, of the
22 Montana constitution by a final court order; or

23 (ii) is prevented by an injunction;

24 (c) have exhausted the debt service reserve for the
25 bonds; and

1 (d) have complied with all the requirements for the
2 bonds contained in [section 2] and this section.

3 (2) To qualify for the state loan described in
4 subsection (1), a school district, before issuing its bonds,
5 must have:

6 (a) received voter approval for bonds pursuant to
7 20-9-421;

8 (b) following voter approval, received a certificate of
9 eligibility from the board of public education stating that
10 after consultation with the superintendent of public
11 instruction, the board has determined that a minimum of 75%
12 of the principal amount of the proposed bonds will be used
13 to:

14 (i) restore, rebuild, or replace a destroyed or
15 severely damaged school building;

16 (ii) correct one or more building deficiencies that
17 affect the health and safety of school children;

18 (iii) correct one or more deficiencies that prevent the
19 school district from meeting current accreditation
20 standards; or

21 (iv) address any combination of circumstances described
22 under subsections (2)(b)(i) through (2)(b)(iii); and

23 (c) received a final certificate of allocation from the
24 department of administration pursuant to subsection (5).

25 (3) The board of public education shall:

1 (a) maintain a record of the total principal amount of
2 bonds for which certification has been issued; and

3 (b) immediately furnish to the department a copy of
4 each certificate issued.

5 (4) Upon receipt of a copy of the certificate from the
6 board of public education, the department shall temporarily
7 allocate loan authority to the school district for EQUAL TO
8 the principal amount of bonds indicated in the board's
9 certificate. The principal amount of bonds for which final
10 certification is issued may be less than the principal
11 amount of bonds approved by the voters pursuant to
12 subsection (2)(a).

13 (5) To obtain a final certificate of allocation, a
14 school district shall provide the department, on a form
15 provided by the department, the following information:

16 (a) the tentative date of sale of the school district's
17 bonds;

18 (b) the principal amount of the bonds to be issued;

19 (c) the name and addresses of bond counsel and the
20 financial advisor; and

21 (d) other information as requested by the department.

22 (6) Upon issuance of the bonds, a school district shall
23 forward to the department a copy of the district's bond
24 resolution, the final opinion of bond counsel on the bonds,
25 and a schedule of principal and interest payments on the

1 bonds to maturity. The bond resolution must include a
2 covenant agreeing to:

3 (a) defend any lawsuit challenging the school
4 district's authority to sell and issue the bonds and to levy
5 a tax for payment of the principal of and interest on the
6 bonds;

7 (b) provide to the department before August 1 of each
8 year a report of the school district's outstanding principal
9 balance as of the preceding June 30 on the bonds secured by
10 ~~state-loans~~ THE-STATE STATE LOANS;

11 (c) refund the bonds on any normal call date if, during
12 the term of the bonds, the school district can refund its
13 bonds without the state loan security and without increasing
14 its total debt service costs on the bonds; and

15 (d) enter into a contract with the department
16 establishing a schedule to repay the state if the state
17 loans the school district money to make payments on district
18 bonds. Notwithstanding other provisions of law, the loan
19 must be repaid by the school district at a rate equivalent
20 to the average yield of the pooled investment fund
21 established in 17-6-203(3), commonly known as the short-term
22 investment pool, for the period of the loan. REPAYMENT MUST
23 BEGIN NO LATER THAN JANUARY 1, 1994, AND THE LOAN MUST BE
24 REPAID IN FULL WITHIN 10 YEARS FROM THE DATE THE FIRST LOAN
25 IS ISSUED TO A SCHOOL DISTRICT. Repayment must be paid from

1 the sources designated for repayment of the bonds or from
 2 any other revenue AND ASSETS of the school district,
 3 including state equalization funds currently distributed or
 4 which may be distributed to the district. ~~THE OBLIGATION OF~~
 5 ~~THE SCHOOL DISTRICT TO PAY BONDHOLDERS IS SENIOR TO ITS~~
 6 ~~OBLIGATION TO REPAY THE STATE LOAN.~~ Loan repayments received
 7 by the department must be deposited in the coal severance
 8 tax school bond contingency loan fund.

9 (7) The department shall maintain a record of the total
 10 principal amount of bonds secured by state loans.

11 (8) A school district issuing bonds subject to [section
 12 2] and this section may apply to the attorney general for a
 13 determination as to whether its bonds are affected by a
 14 court order declaring that the bonds of another district are
 15 invalid or unenforceable.

16 (9) A school district whose authority to levy a
 17 property tax to pay principal of and interest on bonds has
 18 been challenged shall, upon notification of the challenge,
 19 immediately notify the attorney general and the department.

20 NEW SECTION. Section 2. State loan -- limitation on
 21 state loan authority -- priority of loan allocation --
 22 application. (1) The allocation of the state's loan
 23 authority for bonds issued pursuant to [section 1] is
 24 intended only to enable a school district to issue bonds
 25 pending resolution of the financing of capital outlay.

1 (2) Except as provided in subsection (5), the total
 2 principal amount of school district bonds that may be
 3 secured by loans under [section 1] may not exceed \$25
 4 million and must be allocated to qualifying school districts
 5 on a first-come, first-serve basis in order of issuance of
 6 final certificates of allocation by the department of
 7 administration.

8 (3) An individual school district may not issue bonds
 9 secured by a state loan with a principal amount in excess of
 10 \$6 million.

11 (4) If more than one school district qualifies for a
 12 state loan and an insufficient amount of state loan
 13 authority remains, the board of public education shall
 14 allocate the state loan authority to the district with the
 15 earliest voter approval of its bonds.

16 (5) Prior to allocating the final \$1.5 million of state
 17 loan authority under [section 1], the board of public
 18 education shall determine if there is a school district
 19 eligible for a state loan under [section 1(2)(b)(i)] and, if
 20 so, shall give that district first priority to the remaining
 21 loan authority.

22 (6) This section does not apply unless a bond
 23 resolution contains the covenant required under [section
 24 1(6)].

25 **Section 3.** Section 17-5-703, MCA, is amended to read:

1 "17-5-703. Coal severance tax trust funds. (1) The
2 trust established under Article IX, section 5, of the
3 Montana constitution shall be composed of the following
4 funds:

5 (a) a coal severance tax bond fund into which the
6 constitutionally dedicated receipts from the coal severance
7 tax shall be deposited;

8 (b) a clean coal technology demonstration fund;

9 (c) a coal severance tax permanent fund; and

10 (d) a coal severance tax income fund; and

11 (e) a coal severance tax school bond contingency loan
12 fund.

13 (2) The state treasurer shall determine the amount
14 necessary to meet all principal and interest payments on
15 bonds payable from the coal severance tax bond fund on the
16 next two ensuing semiannual payment dates and retain that
17 amount in the coal severance tax bond fund.

18 (3) (a) Beginning--July-17-1992, ON [THE EFFECTIVE DATE
19 OF THIS ACT] and continuing as long as any school district
20 bonds secured by state loans under [section 1] are
21 outstanding, the state treasurer shall from time to time and
22 as provided in subsection (3)(b) transfer from the coal
23 severance tax bond fund to the coal severance tax school
24 bond contingency loan fund any amount in the coal severance
25 tax bond fund in excess of the amount that is specified in

1 subsection (2) to be retained in the fund.

2 (b) The state treasurer shall transfer the amount
3 referred to in subsection (3)(a) until and unless the
4 balance in the coal severance tax school bond contingency
5 loan fund is equal to the amount due as principal of and
6 interest on the school district bonds secured by state loans
7 under [section 1] during the next following 12 months.

8 ~~(3)~~(4) Beginning on July 1, 1991, and ending on June
9 30, 1997, from any amount in the coal severance tax bond
10 fund in excess of the amount that is specified in subsection
11 (2) to be retained in the fund and in excess of any amount
12 that is required to be transferred by subsection (3), the
13 state treasurer shall from time to time transfer from the
14 ~~excess-amount-in-the-coal-severance-tax-bond-fund~~ an amount
15 not exceeding \$5 million a per fiscal year to the clean coal
16 technology demonstration fund and-any-remaining-amount-to
17 the-coal-severance-tax-permanent-fund.

18 (5) Beginning July 1, 1998 1997, the state treasurer
19 shall transfer to the coal severance tax permanent fund any
20 amount in the coal severance tax bond fund in excess of the
21 amount that is specified in subsection (2) to be retained in
22 the fund and in excess of amounts that are transferred
23 pursuant to subsections (3) and (4)."

24 **Section 4.** Section 17-5-704, MCA, is amended to read:

25 "17-5-704. Investment of funds. Money in the coal

1 severance tax bond fund, the coal severance tax permanent
2 fund, and the coal severance tax income fund, and the coal
3 severance tax school bond contingency loan fund must be
4 invested in accordance with the investment standards for
5 coal severance tax funds. Income and earnings from all funds
6 are statutorily appropriated, as provided in 17-7-502, as
7 follows:

- 8 (1) 15% to the state equalization aid account; and
- 9 (2) 85% to the state general fund."

10 ~~Section 5. Section 17-5-1600, MCA, is amended to read:~~

11 ~~"17-5-1600. Limitations on amounts. The board may not~~
12 ~~issue any bonds or notes that cause the total outstanding~~
13 ~~indebtedness of the board under this part (except for bonds~~
14 ~~or notes issued to fund or refund other outstanding bonds or~~
15 ~~notes or to purchase registered warrants or tax or revenue~~
16 ~~anticipation notes of a local government as defined in~~
17 ~~7-6-1101) to exceed \$50 million, less the principal amount~~
18 ~~of outstanding school district bonds that are secured by~~
19 ~~state loans under [section 1]."~~

20 **Section 5.** Section 17-6-310, MCA, is amended to read:

21 "17-6-310. No Limits on direct loans. (1) The Except as
22 provided in [section 1], the state may not use this revenue
23 the portion of the permanent coal tax trust fund designated
24 for investment in the Montana economy to make direct loans.

25 (2) The Except as provided in [section 1], the

1 permanent coal tax trust fund may not be used by the board
2 of investments to make direct loans to individual borrowers.
3 The purchase of debentures issued by a capital company and
4 loans or portions of loans originated by a financial
5 institution that are sold to the trust are not direct
6 loans."

7 **NEW SECTION. Section 6.** Codification instruction.

8 [Sections 1 and 2] are intended to be codified as an
9 integral part of Title 20, chapter 9, part 4, and the
10 provisions of Title 20, chapter 9, part 4, apply to
11 [sections 1 and 2].

12 ~~NEW SECTION. SECTION 7. REQUIREMENT FOR THREE FOURTHS~~
13 ~~VOTE, BECAUSE {THIS ACT} APPROPRIATES MONEY FROM THE~~
14 ~~PERMANENT COAL SEVERANCE TAX FUND, A VOTE OF THREE FOURTHS~~
15 ~~OF EACH HOUSE OF THE LEGISLATURE IS REQUIRED FOR APPROVAL OF~~
16 ~~{THIS ACT}.~~

17 **SECTION 7.** SECTION 17-5-703, MCA, IS AMENDED TO READ:

18 "17-5-703. Coal severance tax trust funds. (1) The
19 trust established under Article IX, section 5, of the
20 Montana constitution shall be composed of the following
21 funds:

22 (a) a coal severance tax bond fund into which the
23 constitutionally dedicated receipts from the coal severance
24 tax shall be deposited;

25 (b) a treasure state endowment fund;

1 (c) a clean coal technology demonstration fund;
 2 (d) a coal severance tax permanent fund; and
 3 (e) a coal severance tax income fund; and
 4 (f) a coal severance tax school bond contingency loan
 5 fund.

6 (2) The state treasurer shall determine the amount
 7 necessary to meet all principal and interest payments on
 8 bonds payable from the coal severance tax bond fund on the
 9 next two ensuing semiannual payment dates and retain that
 10 amount in the coal severance tax bond fund.

11 (3) (a) On [the effective date of this act] and
 12 continuing as long as any school district bonds secured by
 13 state loans under [section 1] are outstanding, the state
 14 treasurer shall from time to time and as provided in
 15 subsection (3)(b) transfer from the coal severance tax bond
 16 fund to the coal severance tax school bond contingency loan
 17 fund any amount in the coal severance tax bond fund in
 18 excess of the amount that is specified in subsection (2) to
 19 be retained in the fund.

20 (b) The state treasurer shall transfer the amount
 21 referred to in subsection (3)(a) until and unless the
 22 balance in the coal severance tax school bond contingency
 23 loan fund is equal to the amount due as principal of and
 24 interest on the school district bonds secured by state loans
 25 under [section 1] during the next following 12 months.

1 ~~(3)~~(4) Beginning on July 1, 1991, and ending on June
 2 30, 1997, from any amount in the coal severance tax bond
 3 fund in excess of the amount that is specified in subsection
 4 (2) to be retained in the fund and in excess of any amount
 5 that is required to be transferred by subsection (3), the
 6 state treasurer shall from time to time transfer from--the
 7 excess--amount-in-the-coal-severance-tax-bond-fund an amount
 8 not exceeding \$5 million a per fiscal year to the clean coal
 9 technology demonstration fund and any--remaining--amount--to
 10 the-coal-severance-tax-permanent-fund.

11 (5) Beginning July 1, 1993, and ending June 30, 2013,
 12 the state treasurer shall transfer to the treasure state
 13 endowment fund any amount in the coal severance tax bond
 14 fund in excess of the amount that is specified in subsection
 15 (2) to be retained in the fund and in excess of amounts that
 16 are transferred pursuant to subsections (3) and (4).

17 (6) (a) Beginning July 1, 1993, and ending June 30,
 18 2013, the state treasurer shall from time to time transfer
 19 to the coal severance tax permanent fund 50% of the
 20 principal transferred from the coal severance tax bond fund
 21 to the treasure state endowment fund in the preceding year.

22 (b) The state treasurer shall annually transfer to the
 23 treasure state endowment special revenue account the amount
 24 of interest earnings required to meet the obligations of the
 25 state that are payable from the account in accordance with

1 [section 6 of House Bill No. 19]. Interest earnings not
2 transferred to the treasure state endowment special revenue
3 account must be retained in the treasure state endowment
4 fund."

5 NEW SECTION. Section 8. Effective -date DATES --
6 COORDINATION. {This-act}-is (1) [SECTIONS 1 THROUGH 7 AND
7 THIS SECTION] ARE effective on passage and approval.

8 (2) IF HOUSE BILL NO. 19 IS PASSED AND IS APPROVED BY
9 THE ELECTORATE, THEN [SECTION 3 OF THIS ACT] AND [SECTION 4
10 OF HOUSE BILL NO. 19] ARE VOID AND [SECTION 8 OF THIS ACT]
11 IS EFFECTIVE ON THE DATE OF APPROVAL BY THE ELECTORATE.

-End-

HOUSE STANDING COMMITTEE REPORT

January 15, 1992

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that SB 5 be concurred in as amended .

Signed: _____


Ted Schye, Chairman

CARRIED BY: REP. PAULA DARKO

And, that such amendments read:

1. Page 15, line 6.

Strike: "7"

Insert: "6"

2. Page 15, line 10.

Strike: "8"

Insert: "7"

HOUSE

SB5
81009SC.ERT 

1 SENATE BILL NO. 5

2 INTRODUCED BY BLAYLOCK, DARKO, CONNELLY,

3 B. BROWN, SCHYE, L. NELSON, NATHE,

4 MADISON, DOWELL, GROSFIELD, HARP

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE LOANS
7 TO SCHOOL DISTRICTS TO PAY HOLDERS OF SCHOOL DISTRICT BONDS
8 DECLARED INVALID OR UNENFORCEABLE BY A FINAL COURT ORDER OR
9 INJUNCTION; PROVIDING CRITERIA TO QUALIFY FOR THE STATE
10 LOANS; ESTABLISHING A COAL SEVERANCE TAX SCHOOL BOND
11 CONTINGENCY LOAN FUND; REQUIRING A SCHOOL DISTRICT TO
12 INCLUDE A COVENANT IN THE BOND RESOLUTION; LIMITING THE
13 AMOUNT OF STATE-SECURED LOAN AUTHORITY ALLOCABLE TO SCHOOL
14 DISTRICTS; ~~REQUIRING A THREE-FOURTHS-VOTE-OF-EACH-HOUSE-OF~~
15 ~~THE-LEGISLATURE-FOR-APPROVAL~~; AMENDING SECTIONS 17-5-703,
16 17-5-704, ~~17-5-1608~~, AND 17-6-310, MCA; AND PROVIDING AN
17 IMMEDIATE EFFECTIVE DATE AND A CONTINGENT EFFECTIVE DATE."
18

19 WHEREAS, the decision of the Montana Supreme Court in
20 Helena Elementary School District No. 1 v. State of Montana,
21 236 M 44, 769 P2d 684 (1989) (the Helena School District
22 case), which became effective July 1, 1991, created
23 uncertainty as to the validity and enforceability of Montana
24 school district bonds issued after July 1, 1991; and

25 WHEREAS, neither the 1989 Legislature in House Bill No.

1 28, which addressed the funding issue for school operation,
2 nor the 1991 Legislature addressed equalization of capital
3 outlay; and

4 WHEREAS, on October 7, 1991, the Montana Supreme Court
5 denied a request to delay the effective date of its decision
6 in the Helena School District case beyond July 1, 1991; and

7 WHEREAS, since July 1, 1991, Montana school districts
8 have been unable to issue bonds because bond counsel is
9 unable to give an unqualified opinion as to the validity and
10 enforceability of the bonds; and

11 WHEREAS, there are certain school districts that are in
12 need of new facilities but are currently unable to market
13 bonds, including Plentywood, ~~whose school was~~ AND WEST
14 GLACIER, WHOSE SCHOOLS WERE destroyed by fire; Livingston,
15 which faces closure of its 80-year-old building by the State
16 Fire Prevention and Investigation Program; and Clancy,
17 which, like other districts, faces the threat of
18 accreditation loss because of the unsafe and unsanitary
19 conditions of its building.

20 THEREFORE, the Legislature finds it appropriate that
21 until the 1993 Legislature can address the issue of capital
22 outlay equalization, the state provide school districts the
23 authority to obtain loans secured by the state to pay
24 holders of school district bonds issued between [the
25 effective date of this act] and January 1, 1993, by school

1 districts faced with severe deficiencies in their current
2 facilities.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 NEW SECTION. **Section 1.** School district bonds -- state
6 loan -- qualifications for state loan. (1) The board-of
7 investments DEPARTMENT OF ADMINISTRATION shall make a loan
8 from the coal severance tax school bond contingency loan
9 fund, established in 17-5-703(1)(e), to a school district in
10 an amount equal to the principal and interest payment on
11 qualifying bonds when due in accordance with the provisions
12 contained in the bonds. In order to receive a loan, the
13 school district must:

14 (a) have issued bonds between [the effective date of
15 this act] and January 1, 1993, pursuant to 20-9-421 and
16 20-9-464;

17 (b) be prevented from making principal and interest
18 payments on the bonds because the debt service levy for the
19 bonds:

20 (i) has been declared invalid or unenforceable under
21 Article II, section 4, or Article X, section 1, of the
22 Montana constitution by a final court order; or

23 (ii) is prevented by an injunction;

24 (c) have exhausted the debt service reserve for the
25 bonds; and

1 (d) have complied with all the requirements for the
2 bonds contained in [section 2] and this section.

3 (2) To qualify for the state loan described in
4 subsection (1), a school district, before issuing its bonds,
5 must have:

6 (a) received voter approval for bonds pursuant to
7 20-9-421;

8 (b) following voter approval, received a certificate of
9 eligibility from the board of public education stating that
10 after consultation with the superintendent of public
11 instruction, the board has determined that a minimum of 75%
12 of the principal amount of the proposed bonds will be used
13 to:

14 (i) restore, rebuild, or replace a destroyed or
15 severely damaged school building;

16 (ii) correct one or more building deficiencies that
17 affect the health and safety of school children;

18 (iii) correct one or more deficiencies that prevent the
19 school district from meeting current accreditation
20 standards; or

21 (iv) address any combination of circumstances described
22 under subsections (2)(b)(i) through (2)(b)(iii); and

23 (c) received a final certificate of allocation from the
24 department of administration pursuant to subsection (5).

25 (3) The board of public education shall:

1 (a) maintain a record of the total principal amount of
2 bonds for which certification has been issued; and

3 (b) immediately furnish to the department a copy of
4 each certificate issued.

5 (4) Upon receipt of a copy of the certificate from the
6 board of public education, the department shall temporarily
7 allocate loan authority to the school district for EQUAL TO
8 the principal amount of bonds indicated in the board's
9 certificate. The principal amount of bonds for which final
10 certification is issued may be less than the principal
11 amount of bonds approved by the voters pursuant to
12 subsection (2)(a).

13 (5) To obtain a final certificate of allocation, a
14 school district shall provide the department, on a form
15 provided by the department, the following information:

16 (a) the tentative date of sale of the school district's
17 bonds;

18 (b) the principal amount of the bonds to be issued;

19 (c) the name and addresses of bond counsel and the
20 financial advisor; and

21 (d) other information as requested by the department.

22 (6) Upon issuance of the bonds, a school district shall
23 forward to the department a copy of the district's bond
24 resolution, the final opinion of bond counsel on the bonds,
25 and a schedule of principal and interest payments on the

1 bonds to maturity. The bond resolution must include a
2 covenant agreeing to:

3 (a) defend any lawsuit challenging the school
4 district's authority to sell and issue the bonds and to levy
5 a tax for payment of the principal of and interest on the
6 bonds;

7 (b) provide to the department before August 1 of each
8 year a report of the school district's outstanding principal
9 balance as of the preceding June 30 on the bonds secured by
10 ~~state-loans~~ THE-STATE STATE LOANS;

11 (c) refund the bonds on any normal call date if, during
12 the term of the bonds, the school district can refund its
13 bonds without the state loan security and without increasing
14 its total debt service costs on the bonds; and

15 (d) enter into a contract with the department
16 establishing a schedule to repay the state if the state
17 loans the school district money to make payments on district
18 bonds. Notwithstanding other provisions of law, the loan
19 must be repaid by the school district at a rate equivalent
20 to the average yield of the pooled investment fund
21 established in 17-6-203(3), commonly known as the short-term
22 investment pool, for the period of the loan. REPAYMENT MUST
23 BEGIN NO LATER THAN JANUARY 1, 1994, AND THE LOAN MUST BE
24 REPAID IN FULL WITHIN 10 YEARS FROM THE DATE THE FIRST LOAN
25 IS ISSUED TO A SCHOOL DISTRICT. Repayment must be paid from

1 the sources designated for repayment of the bonds or from
 2 any other revenue AND ASSETS of the school district,
 3 including state equalization funds currently distributed or
 4 which may be distributed to the district. ~~THE OBLIGATION OF~~
 5 ~~THE SCHOOL DISTRICT TO PAY--BONDHOLDERS--IS--SENIOR--TO--ITS~~
 6 ~~OBLIGATION TO REPAY THE STATE LOAN.~~ Loan repayments received
 7 by the department must be deposited in the coal severance
 8 tax school bond contingency loan fund.

9 (7) The department shall maintain a record of the total
 10 principal amount of bonds secured by state loans.

11 (8) A school district issuing bonds subject to [section
 12 2] and this section may apply to the attorney general for a
 13 determination as to whether its bonds are affected by a
 14 court order declaring that the bonds of another district are
 15 invalid or unenforceable.

16 (9) A school district whose authority to levy a
 17 property tax to pay principal of and interest on bonds has
 18 been challenged shall, upon notification of the challenge,
 19 immediately notify the attorney general and the department.

20 NEW SECTION. Section 2. State loan -- limitation on
 21 state loan authority -- priority of loan allocation --
 22 application. (1) The allocation of the state's loan
 23 authority for bonds issued pursuant to [section 1] is
 24 intended only to enable a school district to issue bonds
 25 pending resolution of the financing of capital outlay.

1 (2) Except as provided in subsection (5), the total
 2 principal amount of school district bonds that may be
 3 secured by loans under [section 1] may not exceed \$25
 4 million and must be allocated to qualifying school districts
 5 on a first-come, first-serve basis in order of issuance of
 6 final certificates of allocation by the department of
 7 administration.

8 (3) An individual school district may not issue bonds
 9 secured by a state loan with a principal amount in excess of
 10 \$6 million.

11 (4) If more than one school district qualifies for a
 12 state loan and an insufficient amount of state loan
 13 authority remains, the board of public education shall
 14 allocate the state loan authority to the district with the
 15 earliest voter approval of its bonds.

16 (5) Prior to allocating the final \$1.5 million of state
 17 loan authority under [section 1], the board of public
 18 education shall determine if there is a school district
 19 eligible for a state loan under [section 1(2)(b)(i)] and, if
 20 so, shall give that district first priority to the remaining
 21 loan authority.

22 (6) This section does not apply unless a bond
 23 resolution contains the covenant required under [section
 24 1(6)].

25 **Section 3.** Section 17-5-703, MCA, is amended to read:

1 *17-5-703. Coal severance tax trust funds. (1) The
2 trust established under Article IX, section 5, of the
3 Montana constitution shall be composed of the following
4 funds:

5 (a) a coal severance tax bond fund into which the
6 constitutionally dedicated receipts from the coal severance
7 tax shall be deposited;

8 (b) a clean coal technology demonstration fund;

9 (c) a coal severance tax permanent fund; and

10 (d) a coal severance tax income fund; and

11 (e) a coal severance tax school bond contingency loan
12 fund.

13 (2) The state treasurer shall determine the amount
14 necessary to meet all principal and interest payments on
15 bonds payable from the coal severance tax bond fund on the
16 next two ensuing semiannual payment dates and retain that
17 amount in the coal severance tax bond fund.

18 (3) (a) Beginning--July-17-1992, ON [THE EFFECTIVE DATE
19 OF THIS ACT] and continuing as long as any school district
20 bonds secured by state loans under [section 1] are
21 outstanding, the state treasurer shall from time to time and
22 as provided in subsection (3)(b) transfer from the coal
23 severance tax bond fund to the coal severance tax school
24 bond contingency loan fund any amount in the coal severance
25 tax bond fund in excess of the amount that is specified in

1 subsection (2) to be retained in the fund.

2 (b) The state treasurer shall transfer the amount
3 referred to in subsection (3)(a) until and unless the
4 balance in the coal severance tax school bond contingency
5 loan fund is equal to the amount due as principal of and
6 interest on the school district bonds secured by state loans
7 under [section 1] during the next following 12 months.

8 ~~†3†~~(4) Beginning on July 1, 1991, and ending on June
9 30, 1997, from any amount in the coal severance tax bond
10 fund in excess of the amount that is specified in subsection
11 (2) to be retained in the fund and in excess of any amount
12 that is required to be transferred by subsection (3), the
13 state treasurer shall from time to time transfer from the
14 excess-amount-in-the-coal-severance-tax-bond-fund an amount
15 not exceeding \$5 million a per fiscal year to the clean coal
16 technology demonstration fund and any remaining amount to
17 the coal severance tax permanent fund.

18 (5) Beginning July 1, 1998 1997, the state treasurer
19 shall transfer to the coal severance tax permanent fund any
20 amount in the coal severance tax bond fund in excess of the
21 amount that is specified in subsection (2) to be retained in
22 the fund and in excess of amounts that are transferred
23 pursuant to subsections (3) and (4)."

24 Section 4. Section 17-5-704, MCA, is amended to read:

25 *17-5-704. Investment of funds. Money in the coal

1 severance tax bond fund, the coal severance tax permanent
 2 fund, and the coal severance tax income fund, and the coal
 3 severance tax school bond contingency loan fund must be
 4 invested in accordance with the investment standards for
 5 coal severance tax funds. Income and earnings from all funds
 6 are statutorily appropriated, as provided in 17-7-502, as
 7 follows:

- 8 (1) 15% to the state equalization aid account; and
- 9 (2) 85% to the state general fund."

10 ~~Section 5. Section 17-5-1608, MCA, is amended to read:~~

11 ~~"17-5-1608. Limitations on amounts. The board may not~~
 12 ~~issue any bonds or notes that cause the total outstanding~~
 13 ~~indebtedness of the board under this part (except for bonds~~
 14 ~~or notes issued to fund or refund other outstanding bonds or~~
 15 ~~notes or to purchase registered warrants or tax or revenue~~
 16 ~~anticipation notes of a local government as defined in~~
 17 ~~7-6-1101) to exceed \$50 million, less the principal amount~~
 18 ~~of outstanding school district bonds that are secured by~~
 19 ~~state loans under (section 17-5-1608)."~~

20 **Section 5.** Section 17-6-310, MCA, is amended to read:

21 "17-6-310. No Limits on direct loans. (1) The Except as
 22 provided in [section 1], the state may not use this revenue
 23 the portion of the permanent coal tax trust fund designated
 24 for investment in the Montana economy to make direct loans.

25 (2) The Except as provided in [section 1], the

1 permanent coal tax trust fund may not be used by the board
 2 of investments to make direct loans to individual borrowers.
 3 The purchase of debentures issued by a capital company and
 4 loans or portions of loans originated by a financial
 5 institution that are sold to the trust are not direct
 6 loans."

7 **NEW SECTION. Section 6.** Codification instruction.

8 [Sections 1 and 2] are intended to be codified as an
 9 integral part of Title 20, chapter 9, part 4, and the
 10 provisions of Title 20, chapter 9, part 4, apply to
 11 [sections 1 and 2].

12 ~~NEW SECTION. SECTION 7. REQUIREMENT FOR THREE FOURTHS~~
 13 ~~VOTE. BECAUSE (THIS ACT) APPROPRIATES MONEY FROM THE~~
 14 ~~PERMANENT COAL SEVERANCE TAX FUND, A VOTE OF THREE FOURTHS~~
 15 ~~OF EACH HOUSE OF THE LEGISLATURE IS REQUIRED FOR APPROVAL OF~~
 16 ~~(THIS ACT).~~

17 **SECTION 7.** SECTION 17-5-703, MCA, IS AMENDED TO READ:

18 "17-5-703. Coal severance tax trust funds. (1) The
 19 trust established under Article IX, section 5, of the
 20 Montana constitution shall be composed of the following
 21 funds:

- 22 (a) a coal severance tax bond fund into which the
- 23 constitutionally dedicated receipts from the coal severance
- 24 tax shall be deposited;
- 25 (b) a treasure state endowment fund;

1 (c) a clean coal technology demonstration fund;
 2 ~~(c)~~(d) a coal severance tax permanent fund; and
 3 ~~(d)~~(e) a coal severance tax income fund; and
 4 (f) a coal severance tax school bond contingency loan
 5 fund.

6 (2) The state treasurer shall determine the amount
 7 necessary to meet all principal and interest payments on
 8 bonds payable from the coal severance tax bond fund on the
 9 next two ensuing semiannual payment dates and retain that
 10 amount in the coal severance tax bond fund.

11 (3) (a) On [the effective date of this act] and
 12 continuing as long as any school district bonds secured by
 13 state loans under [section 1] are outstanding, the state
 14 treasurer shall from time to time and as provided in
 15 subsection (3)(b) transfer from the coal severance tax bond
 16 fund to the coal severance tax school bond contingency loan
 17 fund any amount in the coal severance tax bond fund in
 18 excess of the amount that is specified in subsection (2) to
 19 be retained in the fund.

20 (b) The state treasurer shall transfer the amount
 21 referred to in subsection (3)(a) until and unless the
 22 balance in the coal severance tax school bond contingency
 23 loan fund is equal to the amount due as principal of and
 24 interest on the school district bonds secured by state loans
 25 under [section 1] during the next following 12 months.

1 ~~(3)~~(4) Beginning on July 1, 1991, and ending on June
 2 30, 1997, from any amount in the coal severance tax bond
 3 fund in excess of the amount that is specified in subsection
 4 (2) to be retained in the fund and in excess of any amount
 5 that is required to be transferred by subsection (3), the
 6 state treasurer shall from time to time transfer from--the
 7 excess--amount-in-the-coal-severance-tax-bond-fund an amount
 8 not exceeding \$5 million a per fiscal year to the clean coal
 9 technology demonstration fund and any--remaining--amount--to
 10 the-coal-severance-tax-permanent-fund.

11 (5) Beginning July 1, 1993, and ending June 30, 2013,
 12 the state treasurer shall transfer to the treasure state
 13 endowment fund any amount in the coal severance tax bond
 14 fund in excess of the amount that is specified in subsection
 15 (2) to be retained in the fund and in excess of amounts that
 16 are transferred pursuant to subsections (3) and (4).

17 (6) (a) Beginning July 1, 1993, and ending June 30,
 18 2013, the state treasurer shall from time to time transfer
 19 to the coal severance tax permanent fund 50% of the
 20 principal transferred from the coal severance tax bond fund
 21 to the treasure state endowment fund in the preceding year.

22 (b) The state treasurer shall annually transfer to the
 23 treasure state endowment special revenue account the amount
 24 of interest earnings required to meet the obligations of the
 25 state that are payable from the account in accordance with

1 [section 6 of House Bill No. 19]. Interest earnings not
2 transferred to the treasure state endowment special revenue
3 account must be retained in the treasure state endowment
4 fund."

5 NEW SECTION. Section 8. Effective date DATES --
6 COORDINATION. ~~(This act is (1) [SECTIONS 1 THROUGH 7 6 AND~~
7 THIS SECTION] ARE effective on passage and approval.

8 (2) IF HOUSE BILL NO. 19 IS PASSED AND IS APPROVED BY
9 THE ELECTORATE, THEN [SECTION 3 OF THIS ACT] AND [SECTION 4
10 OF HOUSE BILL NO. 19] ARE VOID AND [SECTION 8 7 OF THIS ACT]
11 IS EFFECTIVE ON THE DATE OF APPROVAL BY THE ELECTORATE.

-End-